

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

FILED BY *cf*
DEC 29 AM 8:34
CLERK U.S. DISTRICT COURT
W.D. OF TN, JACKSON

NANCY WEST,

Plaintiff,

VS.

No. 05-1257-T-An

RICHARD C. HARBER and
LAURA HARBER,

Defendants.

ORDER GRANTING ALLSTATE INSURANCE COMPANY'S
MOTION TO SEVER AND FOR SEPARATE TRIALS

Plaintiff Nancy West filed this personal injury action against Defendants Richard C. Harber and Laura Harber in the Circuit Court of McNairy County, Tennessee. Defendants removed the action to this court with jurisdiction predicated on 28 U.S.C. § 1332. Plaintiff has served but not named Allstate Insurance Company ("Allstate"), her uninsured/under-insured insurance carrier. Allstate has moved the court to sever all contract issues regarding uninsured or under-insured coverage pursuant to Fed. R. Civ. P. 42(b).¹ Plaintiff has not responded to the motion. For the reasons set forth below, the motion is GRANTED.

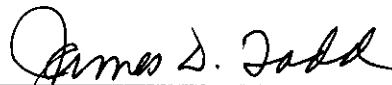
¹ Rule 42(b) provides as follows:

The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues. . . .

Ordinarily, suit may not be brought directly against an uninsured motorist insurance carrier. Webster v. Harris, 727 S.W.2d 248, 251 (Tenn. App. 1987) (citing Hooper v. State Farm Mut. Auto. Ins. Co., 682 S.W.2d 505 (Tenn. App. 1984)). Section 56-7-1206 of Tennessee Code Annotated “preserves for the uninsured motorist carrier the same right of anonymity as that enjoyed by a liability insurance carrier as it defends its insured as the only named defendant.” Webster, 727 S.W.2d at 251. An insurance provider that has been served with process may, in its discretion, file pleadings and otherwise participate in the proceedings. See Harvey v. Birchfield, 535 S.W.2d 334, 336-37 (Tenn.1976).

When a plaintiff sues an uninsured motorist carrier and coverage issues arise, those issues should be severed and tried separately. Id. at 336. Consequently, the motion to sever all contract issues relating to uninsured coverage is GRANTED. The personal injury claim brought by Plaintiff will be tried first. After the resolution of that claim, a scheduling order on the contract claim will be entered.²

IT IS SO ORDERED.



JAMES D. TODD
UNITED STATES DISTRICT JUDGE
28 December 2005
DATE

² Ordinarily, questions involving an insurance policy's coverage and an insurer's duty to defend are questions of law which may be resolved by summary judgment. See Standard Fire Ins. Co. v. Chester O'Donley & Assoc., 972 S.W.2d 1, 5-6 (Tenn.App.1998).



Notice of Distribution

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Honorable James Todd
US DISTRICT COURT